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ABSTRACT

This paper examines the history of the desegregation movement in public education in order to understand a desegregation case in Saint Louis, Missouri. The first section provides information on desegregation litigation over the years, beginning with Plessy v. Ferguson in 1895 and examining in detail the landmark case of Brown v. Board of Education in 1954. The next section discusses Kansas City, Missouri, School District desegregation litigation, explaining how it has significance for what is occurring in the Saint Louis Metropolitan Area. This section explains that in 1997 the state of Missouri argued before a federal judge that the Kansas City desegregation plan had reached unitary status (desegregation). The third section examines Saint Louis, Missouri, School District desegregation litigation and what constitutes unitary status. The final section discusses the political implications of unitary status. (SM)

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UNITARY STATUS: WHAT DOES IT MEAN IN THE SAINT LOUIS DESEGREGATION CASE?

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UNITARY STATUS:

WHAT DOES IT MEAN IN THE SAINT LOUIS DESEGREGATION CASE?

During the past five years, there has been growing concern on the part of local school districts, state boards' of education, state legislatures, other governmental agencies, and the general public about the financing of the various desegregation programs operating in public school districts across the United States. This concern had been focused in both the print and electronic média, even featured on the cover of the April 29, 1996 issue of *Time* magazine. In order to fully understand the present situation, it is important to remember the history of the desegregation movement in public education.

DESEGREGATION LITIGATION

The very first attempt at integration through the federal court system did not directly involve public education but certainly has profound significance for the current situation because it raises a question which strikes at the very heart of the matter. In *Plessey v. Ferguson*, U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1895)., a man who was one-eighth African American and seven-eights European American was told by the conductor of a train that he had to move from the "White" seating section and take a seat in the "Black" section. The man refused and was charged with violating Louisiana law. The U.S. Supreme Court refused to hold the Louisiana law unconstitutional and further stated that as long as equal facilities are provided for each race, a state could require racial segregation.

Of course, the landmark case concerning desegregation is *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686,98 L.Ed. 873 (1954). This case challenged state statutes in Kansas, South Carolina, Virginia, and Delaware which required racial segregation in public schools. The U.S. Supreme Court declared that the "separate but equal" standard was inherently wrong and that separate schools were unequal by the fact that they were separate. Further, the Court stated that segregation in public schools violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

Since the *Brown* decision applied only to states and not to the District of Columbia, another lawsuit had to be filed in order to address the education of African-American students attending public schools in the District of Columbia. Subsequently, in *Bolling v. Sharp*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954), the U.S. Supreme Court declared that racial segregation in the District of Columbia public schools violated the Fifth Amendment's Due Process Clause.

The complex and demanding task of implementing the *Brown* decision caused the Supreme Court to remanded back to the federal district courts this responsibility because of their proximity to local conditions in the public schools. Further, the Supreme Court ordered the implementation to take place "with all deliberate speed." In *Brown v. Board of Education*, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955), the U.S. Supreme Court further mandated that local school district have the primary responsibility for implementation. The federal district courts were responsible for determining "good faith" efforts by school districts in developing the implementation plans. In monitoring the implementation, the federal district courts could take into consideration administrative problems related to school facilities, school transportation programs, personnel, and attendance boundaries. Clearly, the objective was to transform **DUAL**

(segregated) school districts into **UNITARY** (desegregated) school districts.

It took four additional Supreme Court decisions to nullify challenges to implementing the *Brown* decision: In *Cooper v. Aaron*, 358 U.S. 1, 78 S.Ct., 1401, 3 L.Ed.2d 5 (1958), officials of the State of Arkansas enacted laws perpetuating segregation; In *United States v. State of Louisiana*, 364 U.S. 500, 81 S.Ct. 260, 5 L.Ed.2d 245 (1960), officials of the State of Louisiana attempted to set forth that public education was under the exclusive control of the State; In *Griffin v. County School Board*, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256 (1964), the State of Virginia adopted a "freedom of choice" program whereupon Prince Edward County refused to levy taxes which closed public schools and the State offered tax credits and tuition grants to segregated private schools; In *Alexander v. Holmer County Board of Education*, 396 U.S. 19 S.Ct. 29, 24 L.Ed.2d 19 (1996), the State of Mississippi challenged the "with all deliberate speed" mandate of the U.S. Supreme Court. The Court held to its decision in *Brown* and nullified these attempts by the various states.

Other attempts to block desegregation centered around freedom of choice and attendance boundary issues. The State of Tennessee passed a law which gave local boards of education the authority to approve pupil reassignment; this, of course, paved the way for not enrolling European American students in schools where the student population was predominately African American. The U.S. Supreme Court in *Gross v. Board of Education*, 373 U.S. 683, 83 S.Ct. 1405, 10 L.Ed.2d 632 (1963), ruled that classification based on race for transfer purposes between schools was a violation of the Fourteenth Amendment.

With regard to implementation there was another broad areas of litigation: the busing of children to reach racial desegregation. The Los Angeles School District was ordered by a

California court to implement a desegregation plan which included the busing of approximately 60,000 students. This desegregation plan resulted in three U.S. Supreme Court decision between 1978 and 1982: In *Bustop Inc. v. Board of Education of City of Los Angeles*, 439 U.S. 1380, 99 S.Ct. 40, 58 L.Ed.2d 88 (1978), the Supreme Court refused to grant a stay order on the busing issue stating that the California Constitution controlled the busing rather than the U.S. Constitution.

There have been sixteen major court cases dealing with the most fundamental legal issue in school desegregation, the authority of the federal district courts. However, the immediate focus is on the State of Missouri.

KANSAS CITY, MISSOURI SCHOOL DISTRICT DESEGREGATION LITIGATION

The course of action that eventuated in desegregation litigation concerning the Kansas City Metropolitan Area has significance for what is occurring in the Saint Louis Metropolitan Area. The Kansas City School District and two students brought a lawsuit against the State alleging that the State and school districts surrounding the Kansas City area had perpetuated a racially segregated school system. In 1977 the United States Supreme Court ordered interdistrict remedies which were funded by the State of Missouri and the Kansas City School District.

A most significant issue in this case centered around attorney fees. The plaintiffs were represented by a private attorney and the National Association for the Advancement of Colored People (NAACP). The Federal District Court awarded four million dollars in attorney fees to be paid by the State of Missouri. The State appealed the decision through the U.S. Court of Appeals, Eighth Circuit and on to the U.S. Supreme Court. In *Missouri v. Jenkins*, 491 U.S. 274, 109 S.Ct. 2463, 105 L.Ed.2nd 229 (1989) commonly referred to as *Jenkins I*, the Supreme Court

affirmed the lower court decision stating that 42 U.S.C, 1988 definitely authorized the paying of attorney fees as a cost against states.

In *Missouri v. Jenkins*, 495 U.S.33, 110S.Ct. 1651, 109 L.Ed.2nd 31 (1990), commonly referred to as *Jenkins II*, the Supreme Court ruled that the Federal District Court had overstepped its authority when it imposed a tax increase to fund the desegregation plan. Also, in this litigation, the Kansas City, Missouri, School District was transferred to the position of defendant by the District Court.

The Supreme Court in *Missouri v. Jenkins*, 115 S.Ct. 2038, 132 L.Ed.2d 63 (1995), commonly referred to as *Jenkins, III*, has the most significance for the St. Louis Case. The Supreme Court determined that the Federal District Court could not order the State to develop a superior school system in order to attract European American students from the suburban area and from private schools. Essentially the term "superior school system" referred to the construction of magnet schools which were to offer a specialized curricula. Further, the Supreme Court stated that the District Court had overstepped its authority by ordering the Kansas City District to increase teacher salaries.

In January, 1997, the State of Missouri argued before Federal District Judge Russell Clark that the Kansas City desegregation plan has reached **Unitary Status**. Further, the State asked the Court to approve an agreement reached in 1996 between the State of Missouri, the Kansas City School District, and the Kansas City teachers union under which the State would pay the school district $314 million over the next three years after which the State would have no further financial obligation.

ST. LOUIS, MISSOURI SCHOOL DISTRICT DESEGREGATION LITIGATION

The original litigation, *Liddell, et al. v. The Board of Education of the City of St. Louis, Missouri, et al.*, occurred in 1972. Since that time there have been 20 Federal District and U.S. Court of Appeals, Eighth Circuit rulings in this desegregation case. In 1968 the St. Louis City School District opened Yeatman Elementary School in North St. Louis City. Because of overcrowded conditions at Yeatman, the administration assigned some children to a very inadequate facility, Bates Elementary School. A group of parents calling themselves *Concerned Parents of North St. Louis* filed a class action lawsuit in the U.S. District Court alleging that the School District had perpetuated racial segregation in the City's public schools in violation of the Fourteen Amendment.

In 1976 the NAACP intervened on behalf of a group of African American parents which came to be known as the Caldwell Plaintiffs. In 1977 the U.S. Justice Department intervened on behalf of all African American Plaintiffs; also at this time, the State of Missouri and the Missouri State Board of Education were included as Defendants in the case. Subsequently, it became clear that the St. Louis Public School District could not desegregated without the involvement of predominately European American St. Louis County School Districts. Thus, the desegregation plan included both intradistrict and interdistrict elements.

The original *Motion for Declaration of Unitary Status* was filed by the State of Missouri in October, 1991. The question of what constitutes **Unitary Status** in the Liddell Case is currently under review by the Court. If the Court finds that the St. Louis City School District has been successfully desegregated, control will return to the local boards of education. At that time the Constitutional obligations of the school districts is the same as those of nonsegregated school districts.

In *Board of Education of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 111 S.Ct. 630, 112 L.Ed.2d 715 (1991) and *Freeman v. Pitts*, 503 U.S. 467, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992), the Court stated that the only goal of a desegregation remedy is to eliminate intentional segregation and its vestiges to the extent reasonably practicable.

POLITICAL IMPLICATIONS OF UNITARY STATUS

April, 1996

Judge George F. Gunn, Jr. appointed Dr. William Danforth, former Chancellor of Washington University, as the Settlement Coordinator to explore whether a settlement can be reached between the State of Missouri, the City of St. Louis School District, St. Louis County School Districts, and a group of parents represented by the NAACP.

July, 1996

Missouri Attorney General Jay Nixon appealed the appointment of Dr. Danforth to the U.S. Court of Appeals, Eighth Circuit and asked the appellate court to impose a deadline on settlement negotiations. Nixon also asked the Court for permission to stop paying for desegregation which he stated has cost the State of Missouri approximately $1.4 billion. Further, Nixon asked that no new students be allowed to enter the program in September, 1996 and that students already in the program be allowed to proceed no further than the building level program in which they are already enrolled. Mr. Nixon stated that the St. Louis and Kansas City desegregation programs cost the State of Missouri approximately $2.9 million per week.

January, 1997

The U.S. Court of Appeals, Eighth Circuit refused to put a deadline on settlement negotiations and remanded back to Judge Gunn the other issues set forth in the appeal.

February, 1997

Missouri's Former U.S. Senator John C. Danforth began a lobbying campaign in support of Missouri Senate Bill 360 introduced by Missouri Senator Harold Caskey, a Democrat from Butler, Missouri. Provisions of the Bill include: 1. A voluntary student transfer program from the City of St. Louis to County school districts. County school districts would receive state aid for the students but the State would no longer provide transportation aid. 2. Authorization for private groups to establish charter schools with State money. 3. Authorization of monetary incentives for school districts to become more cost efficient. 4. Authorization of the State of Missouri to redistribute part of the funds being spent on desegregation to school districts where 20% of the students qualify for free and reduced-priced lunches. This part of the legislation would redistribute approximately $146 million of the $250 million currently being spent annually on desegregation. St. Louis County school districts would receive approximately $18.4 million less than the $51 million they currently receive.

March, 1997

The Missouri Senate Education Committee Chairperson, Senator Ted House developed an alternative to Senate Bill 360. This alternative plan proposes the following: 1. Termination of the Kansas City and St. Louis Desegregation programs. House stated that the intention is to return to the neighborhood school concept which is currently being nullified through busing. 2. Allowance for the Kansas City and the St. Louis School Districts to receive half the desegregation savings on a capita basis for five years after which the money would go into the regular state aid distribution formula. 3. Authorization to spend the other half of the desegregation savings to boost state funding for building projects and special programs such as gifted and vocational education. 4.

Creation of charter schools only with local board of education approval.

Senator House also intends to ask the Missouri Legislature to subdivide the Kansas City and the St. Louis School Districts into a number of smaller districts.

March 4, 1997

St. Louis City Mayor, Freeman Bosley, lost in the Democratic Primary Election to retain the mayoralty for a second term. In his campaign Bosley called for an end to desegregation busing believing that busing had impeded the stabilization of neighborhoods.

ENDNOTES

For a more detailed explanation of the litigation cited in this paper, consult *United States Supreme Court Education Cases*, fourth edition, Rosemount, Minnesota: Data Research Inc., 1996.

Information contained in the **POLITICAL IMPLICATION OF UNITARY STATUS** section was gleaned from articles appearing in the *St. Louis Post-Dispatch*, St. Louis, Missouri: Pulitzer Publications.